



California Fair Political Practices Commission

June 9, 1987

Phillip H. Romney
City of Santa Paula
P.O. Box 569
Santa Paula, CA 93060

Re: Your Request for Advice
Our File No. I-87-134

Dear Mr. Romney:

We have received your letter seeking advice on the conflict of interest provisions of the Political Reform Act.^{1/} Since your letter states only general questions and does not seek advice concerning any particular councilmember, we will consider it to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).^{2/}

FACTS

The City of Santa Paula Growth Management Ordinance rates proposed projects on a point system. Every six months the projects are listed chronologically by the city staff. Those scoring the highest number of points appear at the top of the list and are to receive priority in being allowed to build. The list is then presented to the city council for approval. When presented, the council may, in its discretion and for good cause, reorder the list. It appears that in the future some members of the council may have a financial or contractual interest in the projects appearing on the growth management list.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

QUESTIONS

1. May a councilmember abstain from discussions regarding a project in which he or she has a financial interest, but participate in the discussions regarding the other projects?

2. If the list is not voted on as a whole, but rather each project is voted on separately, may a councilmember abstain from the vote on the project in which he or she has a financial interest, but participate in votes as to the others?

CONCLUSIONS

A councilmember may not make or participate in the making of any decisions on any project appearing on the growth management list if it is reasonably foreseeable that the decision will have a material financial effect on his or her financial interests.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or any member of his immediate family, or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Phillip H. Romney
June 5, 1987
Page 3

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

(Section 87103(a)-(e).)

An effect of a decision is reasonably foreseeable if there is a substantial probability or likelihood that the effect will occur. (Thorner Opinion, 1 FPPC Ops. 198 (No. 75-089, Dec. 4, 1979), copy enclosed.)

Some of the things you should consider in determining foreseeability are whether adjusting or approving the list could be expected to increase or decrease the income producing potential or fair market value of property affected by the project; whether the project or councilmembers' interests will realize financial gains or losses; and whether the decision will increase or decrease the expenses, income, assets, or liabilities of the official's interest.

If you have determined that it is reasonably foreseeable that a decision will affect a financial interest, you next must determine if the affect will be "material." The Commission has adopted regulations which provide guidelines for determining whether the effect of a decision will be considered "material." Since we are not aware of the type of financial interest involved, we can only provide general guidance.

For example, Regulation 18702 (enclosed) provides guidelines for determining when a financial effect of a decision will be material for decisions affecting real property or the source of income of the official. Regulation 18702.2 (copy enclosed) contains monetary guidelines for determining whether the foreseeable effects of a decision on a business entity are considered material. These guidelines differ with the financial size of the business in question.

A councilmember may not vote or participate in discussions on any project in which he or she has a financial interest. If it is reasonably foreseeable that adjusting or approving the list will have a material financial effect on any economic interest of the official, disqualification is required.

Phillip H. Romney
June 5, 1987
Page 4

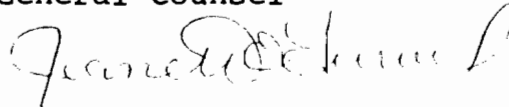
In addition, should an official's interest be indirectly affected by one of the other projects on the list before the council for approval, the official may still be disqualified from participating. This would be the case if it is reasonably foreseeable that the decision will have a material financial effect on the official's interest.

For example, if a project on the list is one that develops property adjacent to property owned by an official, the official may be disqualified from approving the growth management list if it is reasonably foreseeable that the decision will have a material financial effect on the official's property.

When a particular decision situation arises, please feel free to contact this office for more specific advice. If you have any questions, please do not hesitate to contact this office at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: Jeanette E. Turvill
Legal Assistant

DMG:JET:jaj
Enclosures



F P F City of Santa Paula

MAY 4 2 45 PM '87

April 30, 1987

970 VINTNER STREET
SANTA PAULA, CALIFORNIA 93060
Mailing Address: P.O. BOX 569
Phone: 805 525-4478

Fair Political Practices Commission
Post Office Box 807
Sacramento, California 95804-0807

Gentlemen:

The City of Santa Paula Growth Management Ordinance rates proposed projects on a point system. Every six (6) months the projects are listed chronologically by the City staff. Those scoring the highest number of points appear at the top of the list and are to receive priority in being allowed to build. The list is then presented to the City Council for approval. When presented, the Council may, in its discretion, and for good cause, re-order the list. It appears that, in the future, members of the Council may have a financial or contractual interest in the projects appearing on the Growth Management List.

My questions are:

1. May a Councilmember abstain from discussions regarding a project in which he or she has a conflict of interest but participate in the discussions regarding the other projects?

2. If the List is not voted on as a whole, but rather each project is voted on separately on the issue of whether or not a growth management allocation will be granted, may a Councilmember abstain from the vote on the project in which he or she has a conflict of interest but participate in the vote as to the others?

Should you require any additional information, please do not hesitate to contact me.

In any event, your prompt reply would be appreciated.

Very truly yours,

LAW OFFICE OF

PHILLIP H. ROMNEY

PHR/vp
cc: Bob Livingston

87-134



F P F City of Santa Paula

MAY 4 2 45 PM '87

April 30, 1987

970 VENTURA STREET
SANTA PAULA, CALIFORNIA 93060
Mailing Address: P.O. BOX 569
Phone: 805 525-4478

Fair Political Practices Commission
Post Office Box 807
Sacramento, California 95804-0807

Gentlemen:

The City of Santa Paula Growth Management Ordinance rates proposed projects on a point system. Every six (6) months the projects are listed chronologically by the City staff. Those scoring the highest number of points appear at the top of the list and are to receive priority in being allowed to build. The list is then presented to the City Council for approval. When presented, the Council may, in its discretion, and for good cause, re-order the list. It appears that, in the future, members of the Council may have a financial or contractual interest in the projects appearing on the Growth Management List.

My questions are:

1. May a Councilmember abstain from discussions regarding a project in which he or she has a conflict of interest but participate in the discussions regarding the other projects?

2. If the List is not voted on as a whole, but rather each project is voted on separately on the issue of whether or not a growth management allocation will be granted, may a Councilmember abstain from the vote on the project in which he or she has a conflict of interest but participate in the vote as to the others?

Should you require any additional information, please do not hesitate to contact me.

In any event, your prompt reply would be appreciated.

Very truly yours,

LAW OFFICE OF


PHILLIP H. ROMNEY

PHR/vp
cc: Bob Livingston